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FILED

FEB X 8 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

#4

PHILLIP J. GREENE,	{	No. C 08-0714 MMC (PR)
Petitioner,		<b>ORDER OF DISMISSAL; GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS</b>
v.		<b>(Docket Nos. 2 &amp; 3)</b>
HARTLEY, Warden,	}	
Respondent.		

On January 30, 2008, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Included with the petition is a "Motion to File Newly Exhausted Claim Via Second Petition – Abuse of Discretion by Sentencing Court." In said motion, petitioner states he is seeking leave to proceed with a second petition pursuant to 28 U.S.C. § 2244(b). Petitioner characterizes the instant petition as a second petition because the petition contains a newly-exhausted claim concerning sentencing error in connection with petitioner's 2003 conviction in Santa Clara County Superior Court; petitioner currently has pending in this court an earlier-filed petition challenging the validity of the same 2003 conviction. See Greene v. Powers, No. C 05-3433 MMC (PR).

The Court will deny petitioner's motion to proceed with his newly-exhausted claim in the instant petition. Petitioner's earlier-filed petition challenging the validity of petitioner's 2003 conviction is still pending; thus, his challenge to the validity of the sentence arising from the 2003 conviction should be brought in that petition.

Accordingly, petitioner's motion to file a second petition containing his newly-

FILED

FEB X 8 2008

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA

X5

5 PHILLIP J. GREENE,

6 No. CV-08-0714 MMC (PR)

7 Petitioner,

8 v. **JUDGMENT IN A CIVIL CASE**

9 HARTLEY, Warden,

10 Respondent.

11 \_\_\_\_\_ /  
12 **(O) Jury Verdict.** This action came before the Court for a trial by jury. The issues  
13 have been tried and the jury has rendered its verdict.

14 **(X) Decision by Court.** This action came to trial or hearing before the Court. The  
15 issues have been tried or heard and a decision has been rendered.

16 **IT IS SO ORDERED AND ADJUDGED** petitioner's motion to file a second  
17 amended petition containing his newly-exhausted claim is hereby DENIED, and the  
18 instant petition is hereby DISMISSED.

19  
20 Dated: February 8, 2008

Richard W. Wiking, Clerk

*Tracy Lucero*

21 By: Tracy Lucero  
22 Deputy Clerk

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OFFICE OF THE CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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FEB 25 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA



Philip Jason Greene

